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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Rulemaking to Amend Parts 1, 2, 21, and 25
of the Commission's Rules to Redesignate
the 27.5 - 29.5 GHz Frequency Band, to
Reallocate the 29.5 - 30.0 GHz Frequency
Band, to Establish Rules and Policies for
Local Multipoint Distribution Service and
for Fixed Satellite Services

CC Docket No. 92-297

DOCKET FILE COPY ORIGINAL

and

Suite 12 Group Petition for Pioneer's
Preference

PP-22

COMMENTS OF GTE

GTE Service Corporation, its affiliated
domestic telephone and wireless operating
companies

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SUMMARY

In these Comments, GTE respectfully urges the Commission to adopt a competitive license structure for LMDS with two equal licensees in each market. GTE believes that licenses should be granted on a MSA/RSA basis. All qualified parties should be able to compete for LMDS licenses, provided that no one party holds an interest in both licenses for a specific license area.

In addition, GTE urges the Commission to not allow a reduction in the amount of spectrum being allocated for LMDS to cause it to depart from the competitive model for this service. Advances in technology may result in more usable capacity than the marketplace demands, thus licensees should be granted the flexibility to disaggregate LMDS spectrum in their market area as long as other licensees are not interfered with. GTE continues to believe that Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) are preferable license areas to the proposed Basic Trading Areas (BTAs).

GTE also recommends that LMDS be designed such that competitive market forces are the controlling factors, thus permitting streamlined regulation for LMDS and those services with which LMDS competes. With a competitive marketplace for LMDS services, the Commission need not restrict eligibility and, thus, more qualified parties, including LECs and other parties not specifically barred by statute, can offer this new service to the public.

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COMMENTS OF GTE

GTE Service Corporation, its affiliated domestic telephone and wireless operating companies (GTE) respectfully submits these Comments in response to the Commission's Third Notice of Proposed Rulemaking And Supplemental Tentative Decision (Notice or Third Notice), FCC 95-287 (released July 28, 1995).

In these Comments, GTE urges the Commission not to allow a reduction in the amount of spectrum allocated for Local Multipoint Distribution Service (LMDS) to cause departure from the competitive model for this service. In addition, GTE also urges the Commission to allow LMDS licensees to disaggregate spectrum within a market area. GTE also urges that the Commission permit streamlined regulation for LMDS and those services which compete with LMDS. Finally, GTE urges that the Commission need not restrict eligibility for LMDS licenses to the extent permitted by statute.

I. BACKGROUND.

In this proceeding, the Commission proposes a band segmentation plan that splits the 2 GHz of spectrum in the 27.5 - 29.5 GHz band between LMDS and fixed and mobile satellite services. In addition, the Notice seeks comment on a number of issues that directly affect the proposed structure of LMDS (*e.g.*, the number of licensees per market area, the size of the market area, whether a licensee can disaggregate or geographically partition its license, etc.). In anticipation of assigning the LMDS licenses through the auction process, the Notice requests comment on the proposed rules for the competitive bidding process. GTE has actively participated in the earlier proceedings in this matter, and now urges the Commission to structure LMDS such that competition will function as the primary regulating force, rather than to initiate a service that, by design, will require constant Commission attention.

II. DISCUSSION.

- A. While GTE takes no position on the specific recommendations contained in the band splitting plan proposed in the Notice, GTE urges the Commission to not allow a reduction in the amount of spectrum being allocated for LMDS to cause it to depart from the competitive model for this service.**

The Notice (at ¶ 76) requests comment

... on the number and size of licenses which we should make available and on the amount of spectrum each licensee should have ...

GTE believes that this issue, the basic competitive structure of LMDS, is the single most important decision which the Commission will make regarding this important new service. In GTE's view, a design that promotes competition between

LMDS providers in each market, as well as competition with existing video¹ and telecommunications services, will best serve the public interest.

The Notice (at ¶ 78) seeks comment on

whether it is advisable, from a competitive standpoint, to license more than one LMDS operator per market and on any competitive concerns raised by the grant on a 1000 MHz block to a single LMDS licensee in each market. While allowing one LMDS provider per market may help ensure the competitive viability of this fledgling service, and thereby maximize the ability of LMDS licensees to provide significant competition to other services, we recognize that digital LMDS is being developed that has the potential to greatly increase the capacity of LMDS systems.

Assuming that the Commission adopts the band splitting proposal in the Notice, GTE believes that the optimum LMDS structure would permit two equal licensees in each market area. With two LMDS licensees in each market, the competitive forces of the marketplace will ensure that the goals which the Commission envisions for LMDS will be realized in the swiftest and most efficient manner. Virtually all of the concerns the Commission raises in paragraphs 97 - 108 of the Notice are obviated if the LMDS market is structured such that competition between two licensees occurs from the very beginning of the service. In contrast, if the Commission chooses to only permit a single LMDS licensee in each market, it will be extremely difficult if not impossible to introduce a second LMDS licensee in the marketplace at a later time. Absent competition within the LMDS service, the Commission will be forced to undertake a far more active role of

¹ The Notice (at ¶ 77) concludes that LMDS will be competing in a multichannel video programming distribution (MVPD) market. GTE agrees. While LMDS rules should be flexible enough to permit the service to respond to changing market needs, it is clear that initially -- and probably for some time -- video services will be a significant part of LMDS. Therefore, it is safe to assume that LMDS will compete in the MVPD market.

monitoring and regulating LMDS -- functions that would be substantially lessened in a competitive market. The Commission does not have the resources to perform this function nor should it have to in an ever increasingly competitive telecommunications market.

Regarding the possible schemes proposed by the Notice (at ¶ 79), GTE believes that two equal licenses should be granted for each market. Each LMDS provider would have a primary assignment of 425 MHz in the 27.5 - 28.35 GHz band and 75 MHz of co-primary assignment in the 29.1 - 29.25 band. GTE would not support allowing a party holding one of the two LMDS licenses in a market to own a material interest in the other license in the same market. Such an affiliation between the two licensees would diminish the competitive forces that would otherwise act as the checks and balances for the service.

While some parties argue that 1 GHz of spectrum is required for LMDS to be a viable service, GTE does not share that opinion. GTE believes that LMDS can (and will) be viable and competitive with considerably less than 1 GHz of spectrum. In particular, GTE believes other factors (discussed infra) are just as important as the amount of spectrum and must be taken into consideration in designing a proper structure for LMDS. As the industry has seen in the past and continues to observe, advances in digital technologies are producing ever-increasing capacity additions for a fixed amount of spectrum. There is no reason to believe that the same capacity gains will not be realized in the 28 GHz band. The Commission therefore must weigh carefully the claims of those who maintain that, under the proposed band plan, only one LMDS can be viable. These claims may be based more on the assumption that the

lack of competition will result in higher returns, then on the technical ability to offer a viable service in the marketplace.²

B. Even with two licensees per market, advances in technology may result in more usable capacity than the marketplace demands, thus licensees should be granted the flexibility to disaggregate LMDS spectrum in their market area.

As the Notice states (at ¶ 80)

... continued improvements in technology may eventually make it possible for individual licensees to reduce the amount of spectrum they need for the types of services they propose to provide. Accordingly, we propose to permit spectrum disaggregation of spectrum by LMDS licensees.

While GTE supports giving LMDS providers the ability to disaggregate their licenses, it is precisely the continuing ability of technology to increase the useful capacity of spectrum that makes the assigning of two LMDS licenses per market the right choice from the initial start of the service. Even with 500 MHz of spectrum per licensee, advances in technology may so increase usable capacity that, at any one time, there may be more LMDS capacity than the market requires. Should this occur, it is in the public interest to allow LMDS licensees to enter into arrangements that permit this spectrum to be placed into productive use. Therefore, GTE believes that the Commission must establish minimum rules that would ensure that parties acquiring a portion of the original LMDS licensee's spectrum are qualified and will abide by all the technical rules such that their use of the disaggregated spectrum will not interfere with other licensees of the service.

² In the event that certain markets prove that only one licensee, with 1 GHz of spectrum can be viable, the Commission may grant a waiver allowing one licensee to hold both licenses. It is far better to consolidate two licenses in certain markets where conditions warrant, than to split one license into two.

In this regard, the Notice (at ¶ 81) does not propose to limit the amount of spectrum which may be held by any one licensee. GTE agrees. The amount of spectrum held by any one licensee in total is not a principal issue. Rather, GTE believes that as long as there exist two separate and independent licensees in each market, competitive forces will function correctly. Since it is very likely that the assignment of the LMDS licenses will be through the auction process, it is unlikely that any one party will have the financial resources to acquire such significant amounts of spectrum as to cause Commission concern.

C. Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) are preferable license areas to the Basic Trading Areas (BTAs) proposed in the Notice.

GTE continues to support MSA/RSA based licenses.³ BTAs may prove to be too large of an area for any one licensee to initially serve. By basing LMDS licenses on the smaller units (*i.e.*, MSA/RSA), if there is an economic reason for service providers to increase their license areas, they may do so initially at the auction or through later transactions. By making the license areas larger than the marketplace would set, licensees will be more likely to delay service to portions of license areas that extend beyond the MSA areas. Thus, GTE still supports MSA/RSA license areas as the safest and quickest way of bring this service to the public.

If the Commission adopts BTA license areas as proposed in the Notice, geographic partitioning may hasten the provision of LMDS to rural areas. GTE believes that, if the Commission adopts MSA/RSA license areas, there will be less need for

³ GTE Comments, March 16, 1993, at 16-19.

partitioning, since licensees will only have to acquire those areas that they choose to serve. However, should the Commission adopt BTA license areas, GTE believes that the Commission must also permit licensees to partition their licenses to more closely match the serving areas that exist in the marketplace. GTE recommends that the Commission only allow LMDS licensees to geographically partition their spectrum on an all-or-nothing basis. Thus, a LMDS licensee with 500 MHz of spectrum would not be able to geographically partition 100 MHz of spectrum for a portion of their serving area. By adopting an all-or-nothing approach, the public located in the geographic areas partitioned will be able to take full advantage of LMDS. By allowing anything less than the full amount of spectrum, LMDS licensees could limit those receiving the partitioned spectrum in an anticompetitive manner.

D. LMDS should be designed such that competitive market forces are the controlling factors, thus permitting streamlined regulation for LMDS and those services that LMDS competes with.

As the Commission clearly intends LMDS to compete with existing local exchange carriers (LECs), care must be taken that similar type services are similarly regulated. If the Commission establishes two licensee per market, it will be able to adopt streamlined regulatory approaches in many areas. GTE is reluctant to propose costly regulation on any new service. Rather, GTE believes that the time has come to roll back regulation on all competitive services. As LMDS adds one more competitor to the local exchange market, the Commission should consider establishing regulatory parity between the parties by reducing this costly burden on all competitors equally.

- E. With a competitive marketplace for LMDS services, the Commission need not restrict eligibility and thus, more qualified parties can offer this new service to the public.**

TELEPHONE COMPANIES

If the Commission licenses two LMDS providers in each market, even if a LEC were to acquire one of the licenses, it will be unable to thwart the competitive pressure that the other LMDS licensee will bring to the market. Given that the LEC will have paid market price for the spectrum in the auction process, it would make no economic sense to warehouse the spectrum or earn less than the market would allow in an unsuccessful effort to protect its wireline services. In fact, it is more likely that the LEC will vigorously compete with the other LMDS licensee, regardless of the impact on its wireline operations. It should be noted that the license areas being considered by the Commission are generally larger than most LEC serving areas. Thus, even if the LEC has wireline services in the license area, it could use LMDS to extend its service beyond its current serving area.

Given that a LMDS duopoly would prevent any single licensee from withholding the full benefits of LMDS from the public, and that the licensees will have to pay the market price at auction for the spectrum, there is no doubt that only genuine service providers will pursue licenses. Even if a LEC is providing video services in its area, it is unlikely that it would expend the resources to acquire a LMDS license for anything less than a full fledged entry into this new market.

GTE believes that competitive forces intrinsic in a duopoly structure, coupled with the financial commitment to win a license through the auction process, will effectively put to rest any concerns that LECs can or would acquire a LMDS license for

anticompetitive purposes. Thus, LEC should be allowed to compete for a LMDS just as any other qualified party may.

COMMERCIAL MOBILE RADIO SERVICE PROVIDERS (CMRS)

The Notice (at ¶ 102) asks if CMRS providers should be limited in the extent to which they can acquire LMDS spectrum in their serving areas. The Commission then concludes that "[a]cquisition of LMDS spectrum by a CMRS provider would not affect horizontal concentration or otherwise raise competitive concerns." GTE agrees.

CMRS providers should be free to pursue LMDS licenses along with all other qualified applicants. GTE agrees with the Commission in that LMDS is unlikely to provide a mobile service and should not be considered in the calculation of any spectrum cap for mobile services.

CABLE COMPANIES

While GTE believes that Section 613(a) of the Act, 47 U.S.C. § 533(a), prohibits cable operators from holding a license for "multichannel multipoint distribution service," which includes LMDS,⁴ GTE does not believe that a cable company holding one of two possible LMDS licenses raises the same concern that would result if only one LMDS license were granted for each serving area. Absent this statutory restriction, cable companies, if qualified, should be able to hold LMDS licenses for LMDS.⁵

⁴ See GTE Reply Comments, April 15, 1993, at 7-9.

⁵ This deregulatory approach is reflected in the recently-passed House version of telecommunications legislation which will lift the MMDS-cable cross-ownership ban in areas in which there are two wireline providers of video programming. See H.R. 1555, Manager's Amendments, Part 32.

- F. While GTE initially supported Suite 12's request for a Pioneer's Preference prior to the Commission's ability to auction spectrum, GTE questions whether the granting of a preference can be justified under assignment by competitive bidding. At no time did GTE support the awarding of two preference licenses, New York and Los Angeles, as requested by Suite 12.**

While GTE recognizes the early LMDS work done by Suite 12, the injustices of the past lottery assignment methods are no longer a concern under the competitive bidding method. Therefore, Suite 12 would no longer have to depend on a chance selection to be able to offer the service it had worked to develop. Today, capital markets are willing to provide the backing necessary to win one or more licenses for those companies that have a leadership edge or better understanding of innovative technology than the other applicants. The Commission no longer needs to sit in judgement and award preferences as a way of preventing unfair outcomes. Therefore, GTE urges the Commission to condition any license granted under the Pioneer Preference rules, such that the other licenses in the affected market would not be placed in situation of not being able to realistically compete with the preference winner. GTE supports the approach used by the Commission for PCS licenses, and in particular, Section 1.402(e):

As a condition of its license grant, a pioneer's preference grantee will be required to construct a system that substantially uses the design and technologies upon which its pioneer's preference award is based within a reasonable time, as determined by the Commission, after receiving its license. Failure to comply with this provision will result in revocation of the pioneer grantee's license, and transfer of the license will be prohibited until this requirement is met.

In this way, only legitimate applicants truly intending to offer this service to the public will receive this special treatment.

III. CONCLUSION.

For the reasons stated above, GTE respectfully urges the Commission to adopt a competitive license structure for LMDS with two equal licensees in each market. Licenses should be granted on a MSA/RSA basis. All qualified parties should be able to compete for LMDS licenses, provided that no one party holds an interest in both licenses for a specific license area.

Respectfully submitted,

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 7th day of September, 1995 to all parties of record.


Ann D. Berkowitz